

## Subpart 932.8—Assignment of Claims

### 932.803 Policies.

(d) In the case of prime contracts, when it has been determined that the financing of contracts will be facilitated in the interest of DOE programs, it is the policy of DOE that such contracts provide, or be amended without consideration (see Assignment of Claims Act of 1940) to provide, in conformance with 48 CFR 32.804, that payments to be made to an assignee shall not be subject to reduction or setoff. In the case of subcontracts, when loans are made for the purpose of financing performance of subcontracts under DOE prime contracts, financing institutions or the Government as guarantor in those instances in which such loans are guaranteed should not be required to incur risks of loss by reason of possible diversion of assigned subcontracts proceeds for payment of other claims of the prime contractor against the borrower, otherwise unrelated to the assigned subcontracts. The Head of the Contracting Activity shall require the adoption of these policies and practices by DOE prime contractors with respect to DOE subcontract work. The Head of the Contracting Activity should inform the Chief Financial Officer, Headquarters of each DOE contractor who is unwilling to adopt policies consistent with this paragraph and the reasons given in support of the contractor's position.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994; 75 FR 29459, May 26, 2010]

## Subpart 932.9—Prompt Payment

### 932.970 Implementing DOE policies and procedures.

(a) *Invoice payments*—(1) *Contract settlement date*. For purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods*. Where the contracting officer deter-

mines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract financing payments*. Contracting officers may specify payment due dates that are less than the standard 30 days when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized.

[61 FR 41708, Aug. 9, 1996]

## Subpart 932.70—DOE Loan Guarantee Authority

### 932.7002 Authority.

Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Board only by the Secretary, or designee specified for that purpose, and only when made pursuant to enabling legislation or other authority; e.g., by executive order or regulation.

### 932.7003 Policies.

The following policies governing the exercise of its loan guarantee authority have been established by DOE:

(a) The use of the loan guarantee authority is not restricted to contracts or

subcontracts of any particular type or class. Each case is to be evaluated on its own merits and under the particular circumstances applicable thereto.

(b) The fact that a contract has been awarded as a result of competitive bidding should not, of itself, render the loan ineligible for guarantee by DOE if the contractor is financially responsible and its need for working capital is the result of the impact of a defense program or any other DOE program for which guaranteed loans are authorized.

(c) The guarantee authority should, in general, not be used in connection with loans to contractors required to furnish performance bonds, except in those cases in which the time likely to be required for the surety or DOE to take over in the event of default will result in delays which cannot be tolerated by the particular program concerned. When performance bonds have been furnished, the surety shall be required to subordinate its rights in favor of the guaranteed loan.

(d) The criterion that the materials or services to be provided cannot readily be acquired from alternative sources does not require the finding that the materials or services are absolutely unobtainable elsewhere. The criterion should be so applied as to permit guarantees of loans when, although the materials or services can be obtained elsewhere, such factors as the urgency of supply schedules, technical capacity of the contractor, comparative prices, and time and expense involved in re-issuing the contract, including termination payment, establish that it is to the Government's advantage not to resort to alternative sources merely because the contractor or subcontractor may require a guaranteed loan.

(e) If it is known at the time the contract is to be awarded that the low offeror who is technically qualified and competent to furnish the required materials and services will require a guaranteed loan, the contracting officer should obtain appropriate advice and in reaching a decision should consider at least the following—

- (1) The savings to be realized by awarding the contract to the low offeror;
- (2) The risk to the Government in guaranteeing a loan; and

(3) The likelihood, if award is made to the second low offeror, of that offeror's applying for a guaranteed loan at a later date.

Extreme care should be exercised in rejecting a low bid or proposal simply because the low offeror requires a guaranteed loan.

(f) The amount of the loan should bear reasonable relationship to such factors as the value and terms of the contract, the probable investment required to be made by the contractor in payrolls and inventories, the frequency with which contract payments are to be made, and the borrower's current working capital position.

(g) Borrowings for working capital purposes under guaranteed loans shall be limited to the amount necessary to perform the contract for which the loan is sought. In order that the contractor will also use its own funds in the performance of the contracts, amounts outstanding under the loan or line-of-credit shall be limited to an amount not to exceed 90 percent of the borrower's investment in its contracts, regardless of the total amount of the loan or line of credit authorized. The borrower's investment includes all items for which the borrower would be entitled to payment on performance or termination of contracts, but does not include any items for which no work has been done nor expenditures made.

(h) Unless there are exceptional circumstances, the loan should mature not later than 30 days after the estimated date of final payment under the contract.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994; 74 FR 36367, July 22, 2009]

#### **932.7004 Procedures.**

##### **932.7004-1 Guaranteed loans for civilian programs.**

The procedures for authorizing a guaranteed loan under legislation other than section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) shall be essentially the same as those set forth in 48 CFR 32.304, Procedures, 48 CFR 32.305, Loan Guarantees for Terminated Contracts, and 48 CFR 32.306 Loan Guarantee for Subcontracts;